

LEGISLATURE OF NEBRASKA  
ONE HUNDRED THIRD LEGISLATURE  
FIRST SESSION  
**LEGISLATIVE BILL 165**  
Final Reading

Introduced by Dubas, 34.

Read first time January 14, 2013

Committee: Transportation and Telecommunications

A BILL

1 FOR AN ACT relating to the Motor Vehicle Industry Regulation Act; to  
2 amend section 60-1438, Revised Statutes Cumulative  
3 Supplement, 2012; to change a provision relating to  
4 warranty service; and to repeal the original section.  
5 Be it enacted by the people of the State of Nebraska,

1           Section 1. Section 60-1438, Revised Statutes Cumulative  
2 Supplement, 2012, is amended to read:

3           60-1438 (1) Each new motor vehicle manufacturer or  
4 distributor shall specify in writing to each of its new motor vehicle  
5 dealers licensed in this state the dealer's obligations for  
6 preparation, delivery, and warranty service on its products. The  
7 manufacturer or distributor shall compensate the new motor vehicle  
8 dealer for warranty service which such manufacturer or distributor  
9 requires the dealer to provide, including warranty and recall  
10 obligations related to repairing and servicing motor vehicles and all  
11 parts and components included in or manufactured for installation in  
12 the motor vehicles of the manufacturer or distributor. The  
13 manufacturer or distributor shall provide the new motor vehicle  
14 dealer with the schedule of compensation to be paid to the dealer for  
15 parts, work, and service and the time allowance for the performance  
16 of the work and service.

17           (2)(a) The schedule of compensation shall include  
18 reasonable compensation for diagnostic work, as well as repair  
19 service, parts, and labor. Time allowances for the diagnosis and  
20 performance of warranty work and service shall be reasonable and  
21 adequate for the work to be performed. In the determination of what  
22 constitutes reasonable compensation under this section, the principal  
23 factors to be given consideration shall be the prevailing wage rates  
24 being paid by dealers in the community in which the dealer is doing  
25 business, and in no event shall the compensation of the dealer for

1 warranty parts and labor be less than the rates charged by the dealer  
2 for like parts and service to retail or fleet customers, as long as  
3 such rates are reasonable. In determining prevailing wage rates, the  
4 rate of compensation for labor for that portion of repair orders for  
5 routine maintenance, such as tire repair or replacement and oil and  
6 fluid changes, shall not be used.

7 (b) For purposes of this section, compensation for parts  
8 may be determined by calculating the price paid by the dealer for  
9 parts, including all shipping and other charges, multiplied by the  
10 sum of one and the dealer's average percentage markup over the price  
11 paid by the dealer for parts purchased by the dealer from the  
12 manufacturer and sold at retail. The dealer may establish average  
13 percentage markup by submitting to the manufacturer one hundred  
14 sequential customer-paid service repair orders or ninety days of  
15 customer-paid service repair orders, whichever is less, covering  
16 repairs made no more than one hundred eighty days before the  
17 submission and declaring what the average percentage markup is.  
18 Within thirty days after receipt of the repair orders, the  
19 manufacturer may audit the submitted repair orders and approve or  
20 deny approval of the average percentage markup based on the audit.  
21 The average percentage markup shall go into effect forty-five days  
22 after the approval based on that audit. If the manufacturer denies  
23 approval of the average percentage markup declared by the dealer, the  
24 dealer may file a complaint with the board. The manufacturer shall  
25 have the burden to establish that the denial was reasonable. If the

1 board determines that the denial was not reasonable, the denial shall  
2 be deemed a violation of the Motor Vehicle Industry Regulation Act  
3 subject to the enforcement procedures of the act. Only retail sales  
4 not involving warranty repairs or parts supplied for routine vehicle  
5 maintenance shall be considered in calculating average percentage  
6 markup. No manufacturer shall require a dealer to establish average  
7 percentage markup by a methodology, or by requiring information, that  
8 is unduly burdensome or time consuming to provide, including, but not  
9 limited to, part-by-part or transaction-by-transaction calculations.  
10 A dealer shall not request a change in the average percentage markup  
11 more than twice in one calendar year.

12 (3) A manufacturer or distributor shall not do any of the  
13 following:

14 (a) Fail to perform any warranty obligation;

15 (b) Fail to include in written notices of factory recalls  
16 to new motor vehicle owners and dealers the expected date by which  
17 necessary parts and equipment will be available to dealers for the  
18 correction of the defects; or

19 (c) Fail to compensate any of the new motor vehicle  
20 dealers licensed in this state for repairs effected by the recall.

21 (4) A dealer's claim for warranty compensation may be  
22 denied only if:

23 (a) The dealer's claim is based on a nonwarranty repair;

24 (b) The dealer lacks documentation for the claim;

25 (c) The dealer fails to comply with specific substantive

1 terms and conditions of the franchisor's warranty compensation  
2 program; or

3 (d) The manufacturer has a bona fide belief based on  
4 competent evidence that the dealer's claim is intentionally false,  
5 fraudulent, or misrepresented.

6 (5) All claims made by a new motor vehicle dealer  
7 pursuant to this section for labor and parts shall be made within six  
8 months after completing the work and shall be paid within thirty days  
9 after their approval. All claims shall be either approved or  
10 disapproved by the manufacturer or distributor within thirty days  
11 after their receipt on a proper form generally used by the  
12 manufacturer or distributor and containing the usually required  
13 information therein. Any claim not specifically disapproved in  
14 writing within thirty days after the receipt of the form shall be  
15 considered to be approved and payment shall be made within thirty  
16 days. The manufacturer has the right to audit the claims for one year  
17 after payment, except that if the manufacturer has reasonable cause  
18 to believe that a claim submitted by a dealer is intentionally false  
19 or fraudulent, the manufacturer has the right to audit the claims for  
20 four years after payment. For purposes of this subsection, reasonable  
21 cause means a bona fide belief based upon evidence that the issues of  
22 fact are such that a person of ordinary caution, prudence, and  
23 judgment could believe that a claim was intentionally false or  
24 fraudulent. As a result of an audit authorized under this subsection,  
25 the manufacturer has the right to charge back to the new motor

1 vehicle dealer the amount of any previously paid claim after the new  
2 motor vehicle dealer has had notice and an opportunity to participate  
3 in all franchisor internal appeal processes as well as all available  
4 legal processes. The requirement to approve and pay the claim within  
5 thirty days after receipt of the claim does not preclude chargebacks  
6 for any fraudulent claim previously paid. A manufacturer may not deny  
7 a claim based solely on a dealer's incidental failure to comply with  
8 a specific claim processing requirement, such as a clerical error  
9 that does not put into question the legitimacy of the claim. If a  
10 claim is rejected for a clerical error, the dealer may resubmit a  
11 corrected claim in a timely manner.

12 (6) The warranty obligations set forth in this section  
13 shall also apply to any manufacturer of a new motor vehicle  
14 transmission, engine, or rear axle that separately warrants its  
15 components to customers.

16 (7) This section does not apply to recreational vehicles.

17 Sec. 2. Original section 60-1438, Revised Statutes  
18 Cumulative Supplement, 2012, is repealed.